

U.S. SMALL BUSINESS ADMINISTRATION

Office of the National Ombudsman

Regulatory Fairness Hearing

Wichita, Kansas

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PROCEEDINGS

[START AUDIO]

MR. SAMUEL JONES: We have with us today the assistant administrator for SBA for Regulatory Fairness, the national ombudsman. This is a program that I think grew out of the Small Business Regulatory Fairness Enforcement Act - - some years ago. And during that time we have always had very, very active Regulatory Fairness boards in this region. And we're sort of ending up with third generation of those boards now, and we have two members of the Region 7 Board with us today. Nick will introduce them.

Nick Owens, our ombudsman, has a background in public relations, communications, has owned his own firms in that field. He's also been very active politically working with the Bush Transition Team in 2000 with Senator Trent Lott in his home state of Mississippi and with Mississippi governor Haley Barbour. Nick has been with us what? About a year?

MR. NICK OWENS: It's been March 2006, so almost about two years.

MR. JONES: Two years?

MR. OWENS: Yeah.

MR. JONES: Time flies when you're having fun.

MR. OWENS: It does, it does fly.

MR. JONES: Nick will introduce his board members, but I would like to mention - - Mr. Perkins who's on the Board. I found that he stole two of my employees about 18 years ago.

[Laughter]

MALE VOICE: That's great.

MALE VOICE: I think they call that "top landing."

[Laughter]

MR. JONES: We weren't paying them a whole lot in the state of Oklahoma, and they went on to bigger and better things working for Mr. Perkins in Kansas City, so it's a small world.

Thank you all for attending. If you're here representing an agency or if you're here to present testimony or if you're just here observing, thank you for being with us this morning.

Mr. Owens, it's yours.

MR. OWENS: Mr. Administrator, thank you. Thank you for the opportunity to be in Kansas, the Sunflower State. As you said, I'm from Mississippi, so my home₂state is the Magnolia State. So it

is, it is great to be here.

I'm pleased to be joined with two of our distinguished board members. - - my office, as well as the Reg Fair Board, Regional Regulatory Fairness Board, and the chairman is Mr. Tom Schlafly from Missouri. And also from Kansas, the newest board member, Mr. Scott Perkins. So I would, before I begin my remarks, certainly welcome them to the - - .

MR. THOMAS SCHLAFLY: Thank you very much. To give a little bit of my background and my empathy for small business; in my prior life I'm a lawyer, and I noted that nobody ever says nice things about lawyers. I'm a recovering lawyer. - - brown hair, because in 1991 I started a microbrewery in St. Louis, and that's perhaps the ultimate small business in the shadow of Anheuser-Busch. And one thing about the beer business I noted is that it's among the most regulated in the country, because we're heavily regulated at state, federal, and local levels with everything from EPA label restrictions, et cetera.

So that's a long way of saying that as a lawyer, I've advised small businesses and nodded appreciatively. It's another thing when you're the one who is actually having to deal with it. And I'm pleased to say that the office of ombudsmen does offer recourse. I was skeptical when I first heard about it, but there tangible instances where businesses which have been aggrieved by the enforcement--unfair enforcement of federal regulations, which might be well-intentioned, but are misapplied, have found relief through the office of ombudsmen. Thanks to Nick and his staff for that.

With that, my colleague Scott Perkins.

MR. SCOTT PERKINS: Thank you, Tom. It's an honor to be appointed to the board. Honestly, I'm a rookie, so I'm here to learn and try to see what we can do to help, you know, other businesses. My profession is surveying and map making, so I'm a boots-on-the-ground land surveyor as my roots.

We have grown our business in the last 15 years to 50 employees, and we have maximized our growth right to the capacity of a small business size standard for land surveying. So our business--my business has been a beneficiary of the small business set-aside contract. My expertise is in the contract negotiations in that federal market space. So I hope I can serve, and look forward to a term on the Board.

Thank you.

MR. OWENS: Yes, and I do want to say, when you look at small business, we can't be effective workers for small business in our office if we don't have a good working relationship with federal agencies, so I certainly want to recognize the federal agencies who are here. I know Tom Hicks is here from Washington Department of

Labor. Are there any other federal agencies represented?

Wow, we do. So let's just--how about we just do an introduction here. Here we go.

FEMALE VOICE: I'm Linda Doreen (phonetic) with - - .

MS. JUDY FREEMAN: Judy Freeman, OSHA.

MR. JIM KOREN: Jim Koren with Wage-Hour.

MR. DON STEVENS: Don Stevens, United States Equal Employment Opportunity Commission.

MS. ROSANN ROGERSON: Rosann Rogerson, CINTREX.

MALE VOICE: - -

MS. CHERYL PHILLIPPI: Cheryl Phillippi, American Meats, small business owner.

MS. MARCIA STEVENS: Marcia Stevens, Kansas Small Business Development Center, which is at State University.

MR. ROSS HIRST: Ross Hirst, Internal Revenue Service.

MR. HOMER PRICE: Homer Price, River City Trolley - - .

MS. SANDRA RING: Sandy Ring from the SCKEDD office, South Central Kansas Economic Development District.

MR. RICK RAWLINGS: Rick Rawlings, I'm also with SCKEDD.

MS. KARIN WISDOM: Karin Wisdom with Senator Pat Roberts's office.

MALE VOICE: Jack Cornelius (phonetic), Small Business Administration in Wichita District Office.

MR. OWENS: We have some great folks back there.

MR. BILL WILSON: Bill Wilson with Wichita Eagle.

MS. KENYA COX: Kenya Cox with Representative Todd Tiahrt's office.

FEMALE VOICE: - - Kline, Wichita SBA office.

MR. OWENS: Perfect. Thank you all. Thank you all for being here. We certainly value our good working relationship with congressional delegations, federal agencies, and most of all--the reason why we're here--small businesses, and to hear the concerns that you have.

The state of America is 26.5 million small businesses is strong, fundamentally strong. You know, often I say: The good news is I'm not an economist, the bad news is I'm not an economist. But in today's economy small businesses create two-thirds of the new jobs in America.

Even in this state it's 97.1 percent of the businesses are small businesses. And it's obvious that jobs are being created by small business, and the economy realizes growth when small businesses succeed.

And small businesses--I don't know of a small business owner, as I travel the country, who wants to fail. I don't know a small business owner who doesn't want to grow and to succeed. But as we focus on success and opportunities, we also know there are challenges, and that's regulatory and compliance challenges. And the ingenuity of small business owners here, small businesses that go to the SBDC and other places do not--their ingenuity does not come from the federal government, does not come from any of us in Washington D.C., does not come from the state government; it comes from the hard work and the leadership of these businesses.

And often when I say, "We're here from the government, and we're here to help," it makes folks want to run out the door. But we actually are here to help. Usually I time that when somebody's headed out the door.

[Laughter]

But seriously, we want to be helpful. It is an honor to serve in my capacity as the national ombudsmen. You know, it's the longest-titled agency, National Ombudsmen Assistant Administrator of Regulatory Enforcement and Fairness. All it means is trouble shooter. And it is wonderful work that we do every day. But for every success story, there's someone out there that did not know about our function and our office to be able to help them; so that's why we get outside the Washington beltway, to listen and learn from and better understand the concerns of small businesses.

And our focus--and President Bush said many times that the role of government is not to create wealth. The role of government is to create an environment where the entrepreneurial spirit can flourish. If you can risk capital, you can achieve the American dream. But we also know that regulations need to be streamlined. Regulations should be effective; it should not be excessive. And it's been our focus to make sure that small businesses don't operate an environment where there's uncertainty and confusion, and that's for compliance assistance before you get to the final stage of enforcement, often benefits federal government and small businesses.

Areas where we assist small businesses in our office are concerns of excessive audits; penalties; fines; retaliation; support of the - - government, both the good and the bad, without fear of retaliation. It may be - - and compliance issues. These are all issues that we can be helpful with.

It's estimated that small businesses--it costs small businesses

\$7,647 per year, per employee. That's of a small business of 20 employees or less, compared to a larger business of 500 employees or more. And that's 4 1/2 times as much to comply with environmental regulations; 67 percent more for small businesses for tax compliance. And it's often because they can't employ - - super lobbyists and consultants to represent their issues. So obviously the money that small businesses spend on unfair enforcement, unfair regulations would be better to provide, maybe, health care to their employees, grow their business, their product line, and infrastructure of their local business.

In our office we function as a liaison. We liaise with federal agencies. We're based in the FCA, but we troubleshoot throughout all federal agencies; be it EPA, Department of Labor, Department of Commerce. There's 35 agencies, so I won't begin to start naming them all. EPA, I'll say again, who we appreciate the good work.

And we recognized, in fact, last year, six agencies for extraordinary work in working in our office: OSHA; the Department of Labor was recognized, they have an excellent compliance assistance program for small business; Customs Board of Protection, part of the Department of Homeland Security; Department of Transportation; Centers for Medicaid/Medicare Services, part of HHS; and the EPA; and I know there's one I always miss out of that six.

Tom, you usually know who they are.

MALE VOICE: I know that you mentioned the Department of Labor.

[Laughter]

MR. OWENS: That is true, certainly.

And for a little history, Congress created our office in 1996 as part of the Small Business Regulatory Enforcement Fairness Act, SBREFA. And with our office, created the 10 Regional Regulatory Fairness Boards, which Mr. Perkins and Mr. Schlafly is a part of. And we hold about 20 to 30 roundtable hearings a year outside of Washington in the field, if you will, around the country, as I say, to listen, learn from, better understand the concerns of small businesses. It's proven very valuable.

If you look at the aspect of accountability, we're not only accountable to our small businesses that we assist, we're accountable to the United States Congress. And in that role we rate federal agencies from A to F on their responsiveness to small business concerns on compliance assistance, retaliation policies. They inform the small businesses about SBREFA when citations are issued or other penalty concerns, timeliness, quality of response. Did they respond to your issue timely? Was it a form response, or did they seriously look into the issue?

So we've been energized by the work we've been able to do. As I say, I've been on the job a couple of years. Since March--I don't guarantee 100 percent positive resolution to every case, but we do guarantee 100 percent of our effort to work on behalf of small business. And economic impacts, the studies, said that our office has saved upward of \$250 million for small businesses on unintended consequences related to regulatory enforcement and the waiver of penalties.

To give you a few examples of the cross of issues that we address throughout the country: In Seattle there was an issue with USDA. Whether a small business--well, it was an issue to where the food stamp--food and nutrition service of USDA--we have USDA here, I believe. There we are. It was an issue where the small business had fraud issues concerning food stamps. Well, this local community in Washington State, the sustenance, that was an important service or opportunity for families, to provide sustenance for their families. And it was a concern whether the small business committed fraud. It was determined, through working through our office and working with the FDA seeking a high level review of these concerns, that in fact it was a mistake by the agency. Federal agencies do make mistakes, we know. But that's one issue that's impacted thousands of people in that local community.

Another issue - - Illinois in the brew business, there's a small brew pub where an issue of the brew master should be hourly or salary. Well, that was a business decision for that local business owner and his employee. That small business owner spent over \$7,000 battling that and his perception with the federal government. They worked with our office, and we were able to help seek an equitable settlement.

In another case a Georgia shipping company was fined \$2,000 for an alleged import/export violation, and that was an issue that was determined to be an inadvertent error by the agency.

It may not be a specific instance of enforcement, it may be there's a contract that you're concerned about as a small business owner working with the federal government that we should be able to be helpful and facilitate access. I know Tom and others who work in the federal government, navigating the bureaucracy of voice mail can be a challenge; maybe even more so for a small business owner trying to find the right answer and get out of automation, automated voice mail. We help with those issues. So it may be \$100,000 fine, \$1,000 fine or just trying to navigate to the right person, the right office to get the assistance you need, we focus on being helpful in that area.

So that's a brief shot as to what our focus is. I appreciate you being here today. We have a great lineup of testimony from witnesses representing business from pest control, meat processors, - - , and J&H Trucking. Which I was just over in Arkansas yesterday meeting with

small business owners, also with Tyson's Food, so we can appreciate the role of truckers in getting our food to where it needs to go. And also I was into a Wal-Mart, so we appreciate getting the products where they need to do.

So anyway, I look forward to this. Thank you very much. I'll turn it over to Mr. Chairman.

MR. SCHLAFLY: Thank you, Nick. I don't think I've ever heard a better snapshot view of what this very-complicated named entity does.

The first witness on our agenda is Ms. Rosann Rogerson from CINTREX Termite Control.

Ms. Rogerson?

MS. ROGERSON: I'm not - - with them on our first issue - - state regulators creating their own guidelines above and beyond the EPA guidelines and in reference to the product labels we use.

We are - - at a job site new construction, that's where a lot of our business is - - treating homes and schools and - - as well, and the regulators that are issued by the State, they are on the EPA payroll. They are not on the State payroll. They'll come in, and they'll have discussion along the - - of our treatments and go through the chemicals and everything and say "Okay," and they'll write up a "No violation." Next thing we know, we have a violation in the mix. It could be anywhere from \$100,000 on up to \$200 bill. And the fines will go in excess of over \$100,000 for every fine they adjust in their thing.

We're coming up with new eco-friendly guidelines for our company because of the chemical changes. A lot of the chemicals have changed in the last five years, a lot of - - those products. With the new chemicals from the companies that are being developed now, we're able to get them more economical and friendly environment products - - and we're sending that establishment up - - . But because of the labels and the regulations between the EPA and the State, nothing is in line, nothing is balanced, it's whatever that regulator wants to say should be done and not what the label. We are required by law to follow the label, regardless of the regulator, and that's not the current.

Putting more chemicals down doesn't mean it's solving any problems. You can also establish a better way of application or use of the chemicals to minimize the environment and the health, especially around schools. That's one of the reasons why chlorpyrifos was banned, because they did finally change into the building from that chemical, and that's been banned now. And the new chemicals out there, they are a better - - chemical, just the use of them in our own testing and that and testing that we've gotten from other scientists who aren't even related to them, to the chemical companies or to your state

regulating offices.

Like Oklahoma has, the University, does a chemical and termite pooling that they're wanting the applicators to go through before they're licensed and that, want to do all that. Nowhere does the State test--the State is not obligated to [background noise], none of us tested. The EPA labels, our biggest problem is working with those regulators and - - EPA, then they always send us back, "Well, you have to work with your regulator," and you still don't get any answers or cooperation between them.

It's very expensive. You have to deal with the lawyers and have to get the legal written verifications for their, for their laws - - State legislation and all that and show where things have been changed arbitrarily and not proven as being a better or a safer way of doing business and that. It's almost like--the feeling you get when you're out in the field with this is like the regulators are working for the chemical companies. They want you to use more. They want you to buy more. That's the appearance it gives. Now, whether, you know, - - just the appearance of it alone is bad, because there's no science to back any of it, except our own testing that we've gathered.

The other thing that I wrote up on this agenda was the insurance with other trades and that, - - homeowners, we do a lot of new constructions sites. We're in five states. There's a sole proprietor. He contracts me to help him when he - - in the office and the paperwork and that. He's wanting to expand and go nationwide, but we're running--what we're running into now--this just started last year--is the insurance changes, and all of them are telling us it's because the new Patriot Law came. Can't get anyone to justify it or show me where this is causing the increased insurance in that.

We do not pour or deliver products to a construction site. We come in and do a service. We are in the service industry. We are not in the construction industry, and we are listed as a service industry. They're wanting us to come back and buy \$2 million worth of insurance, which it costs us an additional 4 to \$6,000, depending on which tier. And - - their own causes. In tier 1 it says it's for contracts, and that's \$100,000. Well, contract - - . And if you want me to carry that additional insurance, it's another \$4,000. We're running into massive insurance increases just pouring in every spot we go.

And these could be government sites. We just lost the Kansas City Chiefs contract because we couldn't afford to get the insurance - - . They don't even want to do it because of that. And they got their own clause there. Well, it's only for a contract over \$100,000. We're talking \$4,000, and they're still forcing us to get it. So instead, they just scratched the whole thing. We've run into that three times in the last nine months. We're losing jobs just because of insurance.

And we have the highest--₉ right now our company carries the

highest insurance coverage for our industry anyway. We're at a million on general liability, two million on general aggregate, and on vehicles we're up to a million there. And they're wanting us to even go up to another two million. Well, I think we're too high as it is now.

We're never on site. We don't stay on site. We aren't commission - - . We come in, provide a service, and leave. We're there to do our job and leave. We're never standing on site. And when we go to the construction sites, we go after hours so no one is being exposed to anything. It's either during the lunch break and then they aren't allowed in there for another 12 to 24 hours, depending on the chemical application. We try to do it at night so by the time they come back in in the morning, it's cured and - - off, and they can go on to progress their job site.

That's the majority of the issues we have got right now. We've got a lot more. I do a lot of work with - - government, like Fort Riley and Oklahoma, Texas, and Missouri, and FDA helps with that a lot. The general contractors are the best source for me. They helped me walk through the paperwork when they started calling and needing people on the government side a few years ago and showed me where to go, where the paperwork that the government requests for their files were submitted. And we - - took a little while. But once it was done, then it was clear and easy, and we could step forward with that paper trail.

- - like this on these sites where if someone's already approved for government site, why are we having to go back through and resubmit all that data over and over again? Because we're putting a building here, another one here, we're still on that site - - .

- - different locations in Missouri and Kansas, helping us get through that - - with their support and information - - .

But even on the labor issue, we're just a sole proprietor and we'll still get 20 sheets of paper for some job sites to fill out for payroll. We don't have payroll. There is not payroll, and they're still forcing us to fill them out. I put on the - - no payroll every time. And they've even got a W-9 that states that already too. The paper flow is constant, and can't get it into that.

And the increase in the insurances, some of the companies, the general contractors have found in some of their documents from their - - where some of that stuff in the insurance isn't required. But not all general contractors have the time to go - - that back through, because most of their subcontractors are companies with employees and have a higher level of involvement. We're probably the most minute thing on the site for them. It's - - industry, per se, for structure.

I think what makes it hard for us on the labor side also is, because we don't have payroll, we don't know the laws - - trying to find

the information that might help, you know, our customers - - to have to do away with that paperwork. I have no idea - - do that, the 20 sheets, and fill them all out. And constant - - not having the resources to even go to a labor specialist or labor accountant and say, "Is there something that we could be using?" You know, it's another expense, whether it's legal or just to get information and have a conversation with an accountant who does specialize in something like that. That's another fee on top of that, just endless and relentless.

That's the majority of it.

MR. SCHLAFLY: Thank you very much.

Scott, do you have any questions?

MR. PERKINS: No questions, but I empathize.

MR. OWENS: Certainly. If we go back to the issue of the EPA labeling. What specifically is the issue with the label? I apologize if you mentioned that.

MS. ROGERSON: All the chemical labels are EPA certified--

MR. OWENS: Right.

MS. ROGERSON: --for any industry changes. On there they'll constitute on what type of preparation you're going to do if it's an existing building or if it's a new construction site building. On the labels it will have the chemical analysis of dilution rates to be used, that were to be used. On all of the labels and in the State guidelines it is up to the applicator's discretion on which application to apply at the chemical - - level, whether it's 1 percent or 1/2 percent volume per ratio to the water mixture or whatever the chemical mixture may end up being.

What we've run into is that the State regulators are wanting us to put an abundance of it in there, more than necessary. And - - contamination, there's no warrant for it. It's a new construction site - - there's no wood in it. Everything is still - - now. You know, we use it as a treatment to prevent the infestation. We're not killing an infestation, we're trying to prevent one. And they're wanting us to use more than the maximum at the site - - we argue with them at the time of application. Will not do it, cannot do it, it's illegal. The label specifically states it, and our State laws specifically state that it's up to the applicator's discretion.

MR. SCHLAFLY: If I may ask a question from what you said. You mentioned this is State regulators asking you to do this, but where this has relevance to this board is that these are State regulators who are on the payroll of the EPA?

MS. ROGERSON: Correct.

MS. SCHLAFLY: So it could be--

MS. ROGERSON: The regulators are not paid by the State. They--I don't know how that comes about, but they are under the EPA. They are paid by the EPA.

MR. PERKINS: Couple questions. The regulatory review where this interaction takes place, so this is after the application has occurred?

MS. ROGERSON: Oh, sometimes it's on site during.

MR. PERKINS: Okay. So I didn't know if it was a records review or an in-process review.

MS. ROGERSON: Yep.

MR. PERKINS: And is it Kansas Department of Health and Environment that the regulators work under?

MS. ROGERSON: The Agricultural - - , Department of Agriculture.

MR. PERKINS: Department of Agriculture. Okay.

MS. CAROL LEVALLEY: This is Carol Levalley. I'm with the Environmental Protection Agency. I'm sorry I got on late on the call, and I just heard her concerns about the requirements on chemicals. And I will take this information and turn it over to the people who handle this at the EPA. And what would be my best approach for someone to call?

MS. ROGERSON: The office in Wichita is (316)652-0683.

MR. OWENS: Can you repeat that number, please?

MS. ROGERSON: (316)652-0683, and the name is Joe Wright.

MS. LEVALLEY: Joe Rice?

MS. ROGERSON: Yes.

MS. LEVALLEY: R-I-C-E?

MS. ROGERSON: W-R-I-G-H-T.

MS. LEVALLEY: Oh, okay. I'm having a hard time hearing.

MS. ROGERSON: That's all right. CINTREX is C-I-N-T-R-E-X.

MR. OWENS: Thank you. And the next point regarding the Department of Labor, is that State or Federal Department of Labor that's an issue of concern with the paperwork? Not sure? Okay.

MS. ROGERSON: I have no idea.

MR. OWENS: Okay.

MS. ROGERSON: It's a request we get from the general contractors. They have to submit - - .

MR. OWENS: Okay.

MR. SCHLAFLY: There was one other question I had on the Environmental regulator. You said in your initial testimony that sometimes they will give you an OK on the job, and then come back and charge violations subsequently. Again, these are the State regulators on the payroll of the EPA who will give you a verbal OK, and then in writing give you a violation notice?

MS. ROGERSON: They'll even have it in writing at the time on site that everything was okay, and then we'll get something in the mail after the fact.

MR. SCHLAFLY: So your specific issue there is written approval notices that are contradicted by subsequent violation notices?

MS. ROGERSON: Right.

MS. LEVALLY: So they're giving you a verbal OK, and then they're coming back in writing with a violation?

MS. ROGERSON: Yes.

MS. LEVALLEY: Okay.

MS. ROGERSON: And writing a OK at the time on site, and then coming back with violations written later, as well.

MR. OWENS: We have Mr. Tom Hicks from the Department of Labor. Do you have any comments on the concerns she is expressing?

MR. HICKS: No, the labor issues I would be concerned, but I think payroll is probably a State requirement.

MR. OWENS: Okay. Well, in our - - federal regulations; however, we do liaise with states and express concerns, and we have had some successful results in working with states and advising them of the concerns brought through these forums and roundtables and hearings. So thank you for your testimony.

MR. SCHLAFLY: The next individual on the agenda is Cheryl Phillippi. Am I pronouncing that correctly?

MS. PHILLIPPI: Yes, you are.

MS. SCHLAFLY: From American Meat Processors, LLC.

Ms. Phillippi?

MS. PHILLIPPI: Thank you.

I'll provide each one of you with a copy of what I intend to read. And I only brought two cards. Essentially my testimony has to do with what I believe to be fraudulent participants in the - - small business program, particularly the disadvantaged program. And the charge is that the Congressional intent and letter of the law is being violated due to the fraud of awards to businesses that are

essentially no more than brokers, which we on the street refer to as desk and chairs. They really have no capacity and no capability to perform the awards that they're given by the USDA or the prime vendors operating under the Department of Defense - - sustenance program. So I'll just try to read through this as quickly as possible.

I'd also like to ask: Who is on the other end of the telephone?

MR. OWENS: We have federal agencies that are participating through ReadyTalk, which is the conference system. USDA is represented here today.

MS. PHILLIPI: So is USDA on the other end of the phone?

MR. OWENS: USDA is present here today.

MS. PHILLIPI: Okay.

MR. OWENS: Yes.

MS. PHILLIPI: I just want to know where my targets are, I guess.

MS. SOBERING: I'm with the Safety Inspection Service, so anything above and beyond that, I won't be able to answer it.

MS. PHILLIPI: And what was your last name?

MS. SOBERING: Sobering.

MS. PHILLIPI: Sobering, okay. Thank you.

Okay. My testimony has to do with Title 13, Chapter 1, Section 124.1. What is the purpose of the 8(a) Business Development Program. Section 8(a) and 7(j) of the Small Business Act authorize a minority small business and capital ownership development program, designated 8(a) business development of 8(a) BD for purposes of the regulations in this part. The purpose of the 8(a) BD program is to assist eligible small disadvantaged business concerns to compete in the American economy through business development.

The point of concern and the complaints that I have are the assistance provided by the USDA commodity procurement staff, specifically William Sessions [phonetic], Dewayne Williams, Sue Olsen, Steve Olsen, and there are other staff members who clearly violate the purpose and the intent of the law. The law, together with adopted regulations, states that brokers are ineligible to participate.

The closed and extremely small circle of cash flow created by awarding these contracts for further processing in meat products to 8(a) companies who are no more than a desk and a chair administrative type business, i.e., brokers, violate the very purpose of the 8(a) program in multiple ways.

No. 1, food safety is at risk by such a contract award, because

there's no direct chain of custody and it's dangerous.

No. 2, the 8(a) company has no capacity and capability for production. There is no production employees, no equipment, no Federal USDA Grant of Inspection number to operate a federal plant, no sufficiency of insurance coverage, no direct chain of custody of products. Such awards are fraudulent. They are awarded to broker companies, and they do not comply with the standard Form 129 with regard to having capacity and capability to produce.

No. 3, the awarded 8(a) brokers are immediately subcontracting production to large corporate conglomerates, such as Cargil XL, to fulfill the delivery; therefore, they do not take ownership or possession or handle the item being processed, and such subcontracts are therefore fraudulent.

No. 4, there is a clear violation of subcontracting provisions regarding further processing operations for meat, such as beef, pork, chicken, and fish which require program audits; and there's no accountability due to the way the contracts are awarded.

No. 5, it creates a triangle of fraud that hinders business for minority small business and capital ownership development. And a triangle of fraud would be defined as the awarding agency, which is partner No.1; the 8(a) broker company, which is partner No. 2; and the large conglomerate meat company is partner No. 3. There is absolutely no business development going on in this triangle of fraud. The triangle violates the legislative intent and purpose of the law.

Furthermore, this triangular business arrangement hinders 8(a) small business from growth and development. Assisting a broker to become - - is not considered business development, it is fraud. The non-native American 8(a) minority company has the most to gain from this continued fraudulent business practice.

The above concerns and complaints are directed towards procurement practices within USDA agencies, specifically the livestock and seed divisions of the Agricultural Marketing Service of USDA. However, these same practices currently exist within the Department of Defense Administration and Oversight regarding prime vendors approved on long-term basis contracts for military food service. Many of the Department of Defense approved prime vendors, with the blessing of the Defense Logistics Agency, Genevieve Venturo [phonetic] as the administrator, fraudulently claimed money under this five percent and ten percent minority refunding incentive program in exchange for purchasing further-processed meat items from 8(a) broker companies.

When such broker style companies are used for procurement, prime vendors clearly know that the broker companies have no capacity or capability for production. This foresighted act of purchasing fraud

involves four entities in the business arrangement; The Department of Defense, the prime vendor companies, the 8(a) broker companies, and the large conglomerate company.

Okay. That's the end of my first point of concern. The second point of concern has to do with food safety issues and how Title 13, Chapter 1, Section 124.108 5(d). Brokers are defined as--or brokers are stated to be ineligible to participate in the 8(a) business development program. A broker is a concern that adds no material value to an item being supplied to a procuring activity or which does not take ownership or possession of or handle the item being procured with its own equipment or facility.

Food safety issues include checking with FSIS, Food Safety Inspections. They clearly and emphatically state that anyone with a Federal Grant of Inspection number cannot loan, rent, borrow out their Federal Grant of Inspection number. Such action is in direct violation of food safety laws and regulations.

I refer you to page one of this paper where - - ongoing triangular business arrangements awarding further processing of meats indicates awarded 8(a) businesses acting as brokers for purposes of obtaining federal contracts are clearly not in possession of a Federal Grant of Inspection number. They are subcontracting each and every portion of the awarded contract to large conglomerates. They have no capacity, they have no capability, and they have no Federal Grant of Inspection number. They have few or no facilities. They have no production employees. They only have administrative staff. They do not own the further processing items. They do not possess the further processing items. They do not handle the further processing items.

Keep in mind that a few of the broker style 8(a) businesses who pretend to handle the further processing items are still a problem in their interpretation of touching or signing shipping vouchers and orders as an intended act of handling the further processing food items. The entire business transaction scheme is therefore a coached sham by the federal public officials employed at USDA.

The lack of administrative oversight on the part of USDA and Department of Defense agency fosters fraud to continue, and it actually hinders or impedes business development of the true 8(a) companies to take the risk associated with having employees, having production facilities, having a full cavalry of state-of-the-art production equipment, and a Federal Grant of Inspection number.

And I might add here that Federal Grant of Inspection numbers are not easy to come by. They take years of development to obtain and maintain. All actions taken by USDA and Department of Defense agencies with regard to the Small Business Act, particularly the enforcement of the Act affecting 8(a) companies, have been manipulated and contrived to appear legitimate to the point that

food safety and the meat industry is now in danger and threatened.

The USDA particularly is working to eliminate regulations requiring them to do business with any and all non-broker firms who are truly 8(a) small businesses. If they worked as hard to promote legitimate non-broker 8(a) companies as they do to hinder them, the growth of the 8(a) native American meat companies would flourish and become substantial. There is more than sufficient need for meat companies engaged in further processing to fulfill orders generated by USDA commodity programs. Similar needs exist for military orders, and Department of Defense's prime vendor program, and this is easily documented.

And I might add here two of these broker companies, in the past three years, have been awarded over 22 million pounds of meat production for the US Commodity Program, specifically in the beef industry, specifically; not the other meats, but the beef. And they were broker companies. Bo Jackson's Ingenuity Company is one of those, and Six Points is another one. Both of those are broker companies, strictly desks and chairs. They have no meat production facility whatsoever, and they have a facade of having a shipping facility. It's just a cover-up of just a desk and a chair. And those can all be verified even on the web under the USA government procurement awards by state and congressional district as to where those contracts went.

And at the same time, if you look at the amount of contracts that went to the legitimate 8(a) native American owned companies that have meat production facilities, four other 8(a) companies that are not--that don't have anything to do with native Americans, all of their awards are less than 2 million pounds. So if you look at 22 million pounds going to desks and chairs versus less than 2 million pounds going to the legitimate meat processing facilities, that's a major difference.

Demonstration of owning your equipment or facilities was - - and the two items of proven capacity and capability, No. 1, to hold a USDA Grant of Inspection Number issued to federal meat processors throughout the United States, a broker company does not have such a number, and those numbers are not capable of being leased or sublet for purposes of processing meat. The 8(a) broker companies are fraudulent in presenting facts that they are manufacturing meat products--ground beef, steaks - - et cetera. They do not even come close to manufacturing. They shuffle and handle papers associated with meat ops, and such actions do not constitute manufacturing. It does not constitute ownership, possession, or handling of the product either. It is fraud, and it is illegal.

No. 2, to employ more than a handful of people and thereby demonstrate capacity and capability in the further processing of meat, prequalification of legitimate bidders within - - program requires a demonstration of capacity and capability. Besides a sizeable

workforce, companies are required to have equipment, insurance, food safety - - programs that have been accepted by the USDA, and other amenities. Unless it is a shell or sham situation that has been artificially approved or endorsed recognized by the USDA commodity procurement staff, the 8(a) broker company has none of these - - within their corporate structures.

There are many GSA schedule programs operated and offered by our government allowing the 8(a) broker companies to thrive. And that's one of the reasons why I don't understand why they're allowed to also participate in a highly-regulated industry, such as meat and food safety issues, because they don't have the components that would allow them to compete. The further processing of meats as a commodity for purchase by federal agencies is not such a program. These so-called 8(a) broker style companies need to transact business with products and services other than meat or food products.

Business development issues with regard to this complaint: Regarding violation of the Small Business Act, there are clearly ongoing federal agency actions being taken with the award of each contract the broker style 8(a) agency company that transgresses virtually every definition within the federal regulation. For example, No. 1, agency audit requirement being selective. Audits of productions are required for those 8(a) small business contractors selling meat to either USDA or Department of Defense destinations.

No. 2, a broker defined is ineligible. The appearance of being in business does not constitute business development or growth. A broker style business is ineligible because such business model defeats the very purpose of the law, which is small business development. A broker style business has a relatively small payroll, virtually no risk, no capacity for meat productions, no capability for meat productions, no direct responsibility, and no investment. Signing a waiver, an affidavit, or an endorsement of a large conglomerate meat producer does not constitute capacity and capability.

No. 3, various policies - - and promoted by the USDA Commodity and Department of Defense prime vendor programs are not consistent in their interpretation of the Small Business Act federal regulations, thereby hindering and restricting business development. Selecting an arbitrary audit practice prohibits competition in a fair manner. For example, the smallest possible contract awarded on one truck load may frequently carry with it requirements for a full blown program and production audit. Such auditing born entirely by the 8(a) small business owners are cost prohibiting. The USDA Commodity program staff realizes this, and yet they continue to create situations that are impossible to abide by or finance. This type of market and contract aware manipulation allows the USDA staff to continue their fraudulent awards in the triangular business arrangement described on

page one of this paper.

In summary, I am - - that the current practices engaged in by both USDA Commodity procurement staff and the Department of Defense prime vendor administrative staff will be stopped. I trust that the involved federal agencies will become law abiding, and thereby benefit those who meet definitions of the Small Business Act as certified 8(a) companies engaged in the further processing of meat products. I intend to - - those 8(a) native American minority bonafide meat production companies, as opposed to the non-native American minorities who have inappropriately robbed and defrauded many millions of dollars profit from the 8(a) - - program by being allowed to act as, quote, brokers only, unquote, and passing money through to large conglomerate meat producers.

Accountability of upper level meat procurement staff is required to stop this - - administration of the procurement laws and regulations, specifically Title 13, Chapter 1, Sections 124.108 5(d).

And that's the end of my testimony.

MR. OWENS: Thank you.

Any questions? Scott?

MR. PERKINS: Cheryl, are there any certifications or licensures required by the individuals involved with the meat processing?

MS. PHILLIPPI: By the individual?

MR. PERKINS: Yeah. I'm trying to draw a parallel to my knowledge with the surveying profession.

MS. PHILLIPPI: No. You're licensed by a more technical profession, and the people who produce meat are only entitled to do so because of granting that federal inspection number. It is granted to the business because of the staff that has proven they can produce food safely.

MR. PERKINS: The broker company, there's no person licensed or certified exercising any responsible charge?

MS. PHILLIPPI: That's correct. And they think they're getting around that by passing it on to who they are subcontracting with, which I used Cargil as an example there - - nobody cares, and they have no way--I mean, Cargil abides by all the federal regulations--

MR. PERKINS: Sure.

MS. PHILLIPPI: --but the fact that they are abiding by it is not owned or legitimately transferred to the broker style business.

MR. OWENS: Thank you for your testimony, very comprehensive testimony. What has been your experience as far as

reviewing these issues of the USDA, be it the office of small and disadvantaged businesses--have you communicated these concerns?

MS. PHILLIPPI: They're very--those gentlemen whose names I have listed--

MR. OWENS: Right.

MS. PHILLIPPI: --are very aware.

MR. OWENS: So as far as the Office of Small Business at USDA, have you discussed these concerns with them?

MS. PHILLIPPI: I'd say no.

MR. OWENS: Okay, okay. Well, thank you. Certainly from this forum we will take this testimony and work with the government contracting, as well as USDA as seeking a high level of review concern.

MR. SCHLAFLY: I have a question. Are the brokers pretending that they have a Grant of Inspection number? I'm curious when the broker makes this deal with the Department of Defense, does it say: We, XYZ Meat Processors desk and chair in Wichita, are making this hamburger. Or do they say--are they truthful in saying: This is hamburger coming from Cargil and we're--we as a minority business are selling it to the government.

MS. PHILLIPPI: I would like to witness those conversations to know how they're getting around that.

MR. SCHLAFLY: But you--

MS. PHILLIPPI: I have never been allowed to witness those.

MR. SCHLAFLY: But is there paperwork? I'm kind of curious as to--

MS. PHILLIPPI: There's a lot of paperwork, and so how they are transferring the paperwork is a mystery. And I actually think this thing wouldn't have to everyone's attention if it hadn't been for Bo Jackson, who owns Ingenuity by way of his wife, who is the primary majority owner of this company.

But nevertheless, if it hadn't been for his lobbying efforts with the USDA, I don't think the extent of violations would have become so humungous that it would be putting people out of business, that it would have ever evolved even into these - - . Because it was always going on, it was just a matter of degree. But when it became such huge amounts that it was taking business away from people that need to have a business, then it becomes an issue.

MR. SCHLAFLY: And I'm starting at first grade, my understanding of this. But if the law says the producer is supposed to be a qualified business and the qualifying business has to have this

Grant of Inspection number--

MS. PHILLIPPI: They get threatened. I mean, USDA does nothing but threaten. In fact, I don't even - - anymore.

MR. SCHLAFLY: But I'm just curious, so USDA is writing a check to an entity--

MS. PHILLIPPI: That shouldn't be getting a check.

MR. SCHLAFLY: --that does not have an inspection number. And is this entity pretending to be a producer, or is there paperwork that says, "We're a broker, and we're buying from a big producer."

MS. PHILLIPPI: No, they don't write that down. They don't ever write that part down. Now, they might say the first party or something, where they're pretending to be. I don't know how they're getting around it. We have no way of knowing, because we're always told we can't see those documents. They don't have that flexibility with the paperwork, that's the problem with it.

MR. PERKINS: Have you filed a - - request? Because if these are publicly - - contracts and they're DOD contracts, they should be a matter of public record and should be accessible under - - .

MS. PHILLIPPI: Well, the DOD has a series of prime contractors, like US Food Supply and Sysco and some others, Sydesco and all the big dogs. Okay. And that's--and inside of those prime contractors there are brownie points for five and ten percent refunding - - points if you do business with 8(a) certified companies for the following, you know, millions of items of things. Well, some of that is beef that gets bought. Okay. In those situations, they're supposed to be buying from bonafide producers; they're not supposed to be buying from brokers. Because there's a whole bunch of things, like desks and chairs and things that they buy, that can be bought from brokers that don't involve food safety whatsoever.

MR. PERKINS: Right, public health safety involved.

MR. SCHLAFLY: So it's not the DOD buying it, it's Sysco or Sydesco. So Sysco or Sydesco says, "Oh, yes, we're having our minority set aside." And someone that Sysco or Sydesco is writing the check to Bo Jackson broker, instead of to a legitimate minority producer, and the Bo Jackson broker is buying from Cargil?

MS. PHILLIPPI: That's correct. It's a pass-through phenomenon that shouldn't be going on, because it violates all the regulations. And it's only been allowed to go on because--now, I'm out of business, so I could complain. They can't put me out of business. But I was not allowed to even be a subcontractor to an 8(a) business because of the nature of how these things are awarded. So as time went on, you know, and the diminishment of the awards was such that you couldn't stay in business.

So now I can afford to complain, because nobody can hurt me, because there is no income. So I can carry the banner that these other people can't carry, because they get threatened. We got threatened when we were in business by the USDA people verbally. You know, if you complain--it's one of those - - if you complain, you might wish you hadn't, those kind of complaints--or those kinds of statements. Well, those aren't good statements to have made to you when you're in small business, because you're barely able to comply with everything anyway, and then you've got somebody going, "Oh, don't tell us how to award contracts."

MR. SCHLAFLY: Okay. Thank you very much, Ms. Phillippi.

The next testimony is from Greg Folz and George Folz, and it will be read--from Tulsa Casting, Inc., being read by Pat Carney.

MR. PAT CARNEY: Yes. Greg and George regret not being here today, and I'm sure their testimony would be more effective than mine, but I will read what they sent. The testimony is directed towards FEMA, and it's a very simple request.

Our flood insurance premium has increased from \$6,058 to \$10,648, a 76 percent increase in six years. When inquiring into this high increase, our flood insurance agent representing American Banker's Insurance Company of Florida informed us that the rate charge is strictly regulated by FEMA.

On March the 4th, 2008, we contacted Senator - - Binhauff's [phonetic] office in Oklahoma City, registering our concern. As yet, we have not received a reply.

Additionally, there - - at the bank--at Oklahoma National Bank in Tulsa have a loan with them on the property, and also an SBA loan on this same property. Flood insurance is required on both of those loans, okay?

Basically, I think what their complaint is is they are paying for flood insurance for catastrophes that have happened away from their area. That's all I have on that.

MR. OWENS: Mr. Carney, thank you for sharing the testimony. Being from Mississippi and the Gulf Coast with Hurricane Katrina, I can certainly understand the unintended consequences that such a natural disaster, which was unprecedented for our country, can impact in areas of insurance costs. And a lot of small businesses continue to meet going concerns or to have a - - for the Gulf Coast for small businesses to grow, insurance cost is an issue.

I'm not familiar with the details that have been regulated by FEMA; but by sharing that testimony, we will review the concern and follow up.

Thank you.

MR. SCHLAFLY: Coming from St. Louis, I'm familiar with floods.

MR. OWENS: I was just in Arkansas yesterday, and I was sharing with the regional administrator, I thought I was going to be washed up to Kansas. It was quite a flood.

Anyway, thank you.

MR. SCHLAFLY: The next one, Kevin Hanschu is a certified safety director of J&H Trucking, Incorporated has testimony again read by Mr. Carney.

MR. CARNEY: Okay. Once again, Mr. Hanschu is a certified safety director for J&H Trucking, Inc. He wanted to be here today. He had an orientation to go through with his drivers, so he couldn't make it, but he regrets not being here. He is addressing both the Federal Motor Carriers Safety Administration and also Interstate Commerce.

His first concern is chain laws. Each state that has a chain law - - had differences in the law, and it should be standardized state by state. So if a driver crosses Utah state line into California, they got a different set of laws, okay?

The next complaint is the cost of fuel. With diesel hitting \$4 a gallon, it's putting a lot of small truckers out of business.

He goes on to talk about state regulations. Rules are unique in each state that they adopt, and the motor carriers are not aware that they are breaking these rules until they are pulled over and cited.

The next set of complaints goes towards Interstate Commerce. He's going to talk about 18 to 20 year old drivers. Eighteen year old drivers with the proper training should be allowed to drive a commercial motor vehicle across state lines. Currently you have to have a--have to be at least 21 years old. Motor carriers lose a great deal of people at 21 years old because they have already started a career, and they have lost a lot of good drivers because of that.

The very last item he would like to address is he thinks that all commercial truck drivers should be required CDL training, and that's a commercial driver's license.

And that's the end of the testimony.

MR. SCHLAFLY: CDL, commercial driver's license?

MR. CARNEY: Yes.

FEMALE VOICE: They all aren't required to have that?

MALE VOICE: That's what I was about to ask.

MR. CARNEY: According to Mr. Hanschu--

MR. OWENS: You're sharing the testimony, so we should

not - - .

[Laughter]

MR. CARNEY: We've got all the information, and we can ask that question.

MR. OWENS: Right, sort of a follow-up. And, again, this is an industry--I'm pleased to hear these concerns--that many small businesses and independent contractors work in this industry, so it's good to hear their concerns. So we will certainly follow up. And on that point, I mean, time is a precious commodity for small business owners, and I want to thank you all for being here, just in even sharing the testimony from these small businesses. It is an issue, and we want to be helpful and work where we can, working with the federal agencies and with our office with that.

MR. SCHLAFLY: I have no questions, especially since Mr. Hanschu isn't here to answer them.

MR. CARNEY: I think it might be more effective, as you can see from these two--

MR. OWENS: Right.

MR. CARNEY: --much more effective testimony.

MR. SCHLAFLY: I have nothing to add.

FEMALE VOICE: Do the drivers--you probably don't know this, Pat - - . Do the individual truck drivers get any tax credits for the fuel with all the taxes that are loaded in the fuel nowadays? Are they even allowed a tax credit anymore?

MR. CARNEY: I don't know.

FEMALE VOICE: I don't know that either.

MR. CARNEY: I don't - - .

FEMALE VOICE: Maybe that's something the SBA should be doing.

MALE VOICE: I know we don't get any for the aviation--

FEMALE VOICE: Yeah.

MALE VOICE: --for our aircraft.

FEMALE VOICE: I don't think - - majority of the tax - - have it there to begin with. I'd rather use - - and the insurance.

[Laughter]

MR. OWENS: So there are no other small businesses?

MALE VOICE: May I add something about the CDL? I have a CDL license - - . The CDL is pretty much a driver's license. Everyone who drives for hire is required a₂₄ CDL. We have different forms of

CDL - - the government is putting a lot of truck drivers out of business. If you're a truck driver and you - - it's three times and you lose your CDL - - in Kansas - - , and that's really unfair on the CDL.

When I first started - - I had two driver's licenses; I had my regular driver's license, and I had a license to drive a truck, which - - driver's license. So if you did something in your car, that counted against your car, but they didn't take your driver's license. The CDL nowadays - - all over the United States is the same, three times and you lose your CDL. You can still drive a car, but you can never drive a truck. And we lost 100,000 truck drivers in the last two years, because - - driving my car every day - - I shouldn't be paying any attention. Well, that counts against my CDL, and you can't get it expunged in court. Your car, you can have anything taken off your car license; but CDL, it's there. And that's forever. That's all your life. So it's a very, very unjust law, and I'm sure a lot of trucking companies think - - .

MR. SCHLAFLY: You may be able to answer my question. Is it possible that Mr. Hanschu's complaint is involving truckers who aren't involved in interstate trucking and who are involved in solely in local deliveries? Is it possible that those are the people he is talking about who are involved in trucking that don't need a CDL?

MALE VOICE: A CDL is a federal license, and is required in every state.

MR. SCHLAFLY: And is it required even for some who just may--

MALE VOICE: - -

MR. SCHLAFLY: What?

MALE VOICE: - -

MR. SCHLAFLY: I'm suggesting if there's, let's say, a local grocery store in Wichita that makes local deliveries or a beer wholesaler, which by definition cannot make interstate deliveries, is it possible that someone who is not allowed to go out of the state is not involved in interstate trucking and doesn't have to get the CDL? Is that possibly what Mr. Hanschu's talking about?

MALE VOICE: Anyone that is hired to drive is required to have a CDL.

MR. SCHLAFLY: Okay.

FEMALE VOICE: If you're hired to drive a commercial vehicle, you have to have a CDL.

MR. SCHLAFLY: Then I don't understand what Mr. Hanschu is--

MALE VOICE: Mr. ²⁵Chairman, I think what Mr.

Hansch is saying is that you should not be able to obtain your CDL by strictly showing up and taking the test--this is for new drivers--that you should have completed a certified training program before taking that exam. I assume if you have the level of skill, you show up, take the examination, and pass it, you can earn the CDL. But he is saying you should have some certified course of training backing up your application when you show up for training.

MR. SCHLAFLY: Okay. So his complaint is not with people without the CDL driving, it's--

FEMALE VOICE: It's training to get it.

MR. SCHLAFLY: People can pass the test, but he has to incur the expense of training people to take the test; is that his--

MALE VOICE: Well, he is recommending that the training be required.

FEMALE VOICE: Mandated through--

MR. CARNEY: I think what he is saying is he's getting drivers who can navigate, who can park the trailer, but may not really have as comprehensive course of training as they should have before he wants to turn them loose on the road with his trucks.

It says new drivers should be required to go to a certified training to get the CDL.

MR. SCHLAFLY: Oh, okay. I misunderstood that.

MR. CARNEY: Yeah, I probably didn't read it right.

FEMALE VOICE: And that includes the school bus drivers too.

MALE VOICE: - -

FEMALE VOICE: - - commercial vehicle, regardless of what kind it is.

MALE VOICE: That a 19 year old should be qualified. Right now you got to be 21 to get a commercial license, and I - - 18 year old. Two years is not making that much difference, other than they don't have the experience. A lot of times by the time you're 21, you've got into a truck somewhere, like I said - - unless you snag a Teamster truck driving job, which is hard to do - - . So I think a 21 year old--I mean, an 18 year old ought to be qualified, and then I think--and I know trucking companies are looking at this CDL - - they're losing drivers all the time, three tickets and you're out.

MR. PERKINS: I have a question. In the surveying profession we have to obtain our licensure in each and every state that we practice in, or we can get a temporary reciprocity or comity provision in certain states, journey states. Does a driver, a professional driver, get a CDL in each state that they drive in?

MALE VOICE: Only his resident state, but they are federal licenses. The federal government makes the regulations, and they all comply by the same rules in every state.

MR. PERKINS: So we should treat it like we treat pilots and have one license - - .

MALE VOICE: - - you got 30 or 60 days to get your license in that state.

MR. PERKINS: The only recourse would be a legislative one, which would never happen.

FEMALE VOICE: Like what you were saying, in our industry we have to be licensed and certified in every state, except some states do honor reciprocity; like Kansas can reciprocate Oklahoma and Missouri and all that. Well, even though Texas, Oklahoma, and Kansas State, they all reciprocate, they still come back and say, "Yeah, by the way, take this test here." or "Go to that class there." Well, either it is or it isn't. The regulations are - - uniform between states either.

And in pest control, termite control, all that has been around for hundreds of years. Science hasn't changed, chemicals have changed. The bugs haven't changed. I don't know why it's not like in your industry. Why isn't nationally regulated with one license so you can go practice anywhere, you know. That bug is no different here than it is down there.

MR. OWENS: I don't know, in Mississippi we have a lot - - . They're a different breed of mosquito down that way.

[Laughter]

FEMALE VOICE: You know, that's another regulation - - . Just like in today's paper they had in there that they want housing--house inspectors to be regulated now, that the real estate - - wanting housing inspectors to be regulated. Well, now we're now talking another \$6,000 insurance on those individuals, and they only make 40, 50 - - , and now they want to regulate the heck out of them now.

MR. OWENS: That's why the office of ombudsmen exists. Seriously, this is a great forum. I want to open it up to any federal agencies here that would like to share any comments about the work that you do for small business.

I know you will certainly share comments, Mr. Hicks.

MR. HICKS: Good morning. I'm Thomas Hicks from the Department of Labor in Washington. - - just a couple things, giving some information about our office and our agency. - - . My office here is the comments and complaints that are - - regarding any of the Department of Labor industry, so we filter those comments and we work with our federal agency departments and Department of Labor do workshops and compliance₂₇ assistance and help educate small

business owners understand the Department of Labor rules and regulations.

We have some local people here from OSHA and Wage and Hourly to tell you about some of the things they're doing and the area that we do national education programs also. Thanks.

MS. SOBERING: I did not come prepared to give any presentation, I just came to listen. So I can tell you what we've done for small businesses briefly. We have an outreach program going on for the past few years, and our Enforcement Investigation and Analysis options of which I have personally gone to each and every small and very small business and presented a--they were given a presentation as to what a company or establishment may expect when an enforcement officer were to come and do an audit, if you will--what we call a - - safety assessment--so that they are not frightened, scared to see a federal officer within their establishment.

And we are working to - - resources of information for these facilities so if they have questions concerning their - - program, as the facility alluded to earlier, we can--we cannot help specifically on - - . We can provide names and numbers of people who can. For example, I work at the Kansas State University, and one of the presenters there, Dr. Liz Boyle [phonetic], is an advocate for small and very small businesses, and she and her team of students do help small and very small businesses with their programs, the - - programs. We provide those names and addresses, along with University of Nebraska and Missouri and any other local academia that may be able to assist.

And then we also let them know that what are the potential results of this - - assessment, whether it could be no enforcement action or the very high course of action that may come about, and what they actually mean. Though it may seem overwhelming and looming, when in actuality they really aren't there. There is a process we go through to say, "Okay. We found some noncompliances that could lead to a safety issue. We would just like you to get some help. We will provide you resources to get your help to bring you back into compliance so everything remains running smoothly."

And this is something we've been doing for the last couple of years. We have finished, and I believe we have contacted every small and very small establishment within our district, which includes Missouri and Kansas. And now we are going, if we haven't already been there, we are conducting our assessments in those establishments - - here at this meeting is conducting one of the - - .

That's kind of what we've been doing. Unfortunately I cannot help you with your situation, because that's out of the realm of my knowledge. Hopefully these gentlemen can. But everything she said about Grants of Inspections is true. They're not easy to get, and they do require some oversight on our part before they can get one, and

they require continued oversight. So there would be someone at least checking on some occasion at these facilities, so they probably do not have a regulation--regulatory oversight.

MR. OWENS: Thank you. Considering you weren't prepared--
[Laughter]

MR. OWENS: --you represented well, the USDA is well represented today. Thank you. Thanks for being here.

MS. FREEMAN: I want to thank you first of all for recognizing OSHA for excellence in compliance - - for small business. It's definitely worth doing, and - - work very hard, as Tom mentioned. But locally I'm the area director here in the Wichita area office - - one building.

But our jurisdiction is the state of Kansas, so the jurisdictional boundaries - - that we have out of my office. Our staff is usually about around 21 total, which includes three - - people. We have approximately 14 compliance, safety, and health officers that enforce the - - compliance. We have one full-time person devoted to client assistance in the state of Kansas - - small business development here locally and throughout the state. Our staff records probably 20 to 23 percent of our total time for everybody devoted to providing compliance assistance, most of it for small businesses because that's the majority of the population we have in our jurisdiction.

We provide a duty officer, and that's one of the services that's very, very popular actually. It's not our compliance assistance specialist, it's usually one of our on-site compliance officers. They staff the office from 8:00 to 4:30 Monday through Friday - - in Kansas and get experienced compliance assistance personnel to answer your questions. And like I said, you don't have to identify yourself to that person. They take complaints, they take information. But certainly if you were a small business and just, you know, wanted to make an anonymous call, that's a good place to start.

Tom handed out some information on the website. The OSHA homepage is www.osha.gov. It's an excellent resource. If you go to our homepage, it actually - - small business. It's almost impossible not to find a link on that page that would take you directly to our small business page. We have it listed under "Audiences," and those that may be looking for us - - there. Under "Compliance" we have small business. You can click on that to find small business. And our small business page, we have a number of resources, a number of links, and only two of them - - take the time to mention. One is that we offer a free on-site consultation.

MR. OWENS: Great program.

MS. FREEMAN: It's a free on-site service. And you will

have - - Department of Labor. I have a couple of brochures. If you're interested in that program and you're not familiar with it, I have the UL address and phone number, you can call them. You do not notify OSHA you are calling them, they do not notify us that you called them unless - - and so they have never - - because everybody that calls them is actually trying to be in compliance, and they want to do that - - free on-site service.

There's also a link on the small business side on the homepage that identifies a publication that's recently been updated again that is called "The Small Business Handbook," - - new and improved checklist. And you can print it online if you'd like to. It also gives you a toll free 800 number for 1-800-321-OSHA. You can call and have that document mailed to you.

We also have a Quick Start on that page that's kind of interesting. We get called - - we don't even know where to start - - to start. You can click Quick Start and peak at areas like - - so we get excellent feedback from that service. And we also, I guess in support of this program - - hand out a letter that notifies those employers in Kansas that we inspect that they have the opportunity to contact - - . We provide that - - .

If you have any questions that I can help you with, I'll stay around for a little bit - - .

MR. OWENS: Thank you.

Compliance assistance is so important, and even in the past year through Senator Snow's leadership in the Senate through the war supplemental appropriations supplemental, there was an amendment to provide for small business compliance--small entity compliance status, which ensures the federal agencies before a rule is in final forum and in effect, that the small business should have adequate access to compliance assistance in plain language about complying with that. So compliance assistance is very important.

Wasn't your agency, but another agency recently talking about when you call, you reach the compliance assistance area. Well, for another agency, a small business in Maine thought they were contacting the compliance assistance area of another agency, and they reached the enforcement side, so they were seeking guidance. Well, what they found was an inspector came out to see them, and was fine \$12,000. So that's a case that we worked on. And it doesn't happen often, but you need to make sure you dial the right number.

[Laughter]

But seriously, ultimately that's about fairness, and that's what we sought with that federal agency is to insure fairness, regardless of where they have reached.

But anyway, thank you for what you do.

MS. FREEMAN: I would like to add we actually have a live person that answers that. It's not a voicemail - - . We actually have a live body, and they're - - .

MR. OWENS: Thank you.

MR. KOREN: Good morning. My name is Jim Koren. I'm Assistant Director for Department of Labor, Wage and Hour Division in Kansas City. Our office covers all of Kansas and half of the state of Missouri.

The Wage and Hour Division recognizes the important role that small businesses play in our nation's economy. We understand that creating and sustaining a business requires many responsibilities, including compliance with federal employment laws. When you have questions about Wage and Hour laws, I encourage you to visit our internet website at www.wagehour.dol.gov. We use a DOL interactive internet advisor system called ELAWS, E-L-A-W-S, which stands for Employment Laws Assistance for Workers and Small Businesses.

Once you're on the website, you have access to a number of compliance assistance materials, such as fact sheets and seminars, links to regulatory tests and the preambles for some of the nation's first comprehensive labor laws. You also have access to opinion letters that explain our views about how labor laws apply to various situations.

The website allows you to submit questions directly to the Wage and Hour Division and to sign up - - information. For instance, there's opinion letters, you can sign up to receive those opinion letters that come out.

There's also--you can also call a toll free number, 1-866--you don't need to write this down, it's on page 3 of the information packet put out by Mr. Tom Hicks. And that has - - US wage.

And I will say a - - any questions who was not able to receive additional information on Wage and Hour Division. I also wanted to say that under the Service Contract Act, there's no requirement for any - - .

FEMALE VOICE: - - find that on your site where I can send that, instead of 20 pages of - - .

MR. KOREN: - -

FEMALE VOICE: You think it's the same - - everybody come into the same room or not?

MR. KOREN: I don't know - - by the Wage and Hour Division for all government agencies - - .

FEMALE VOICE: Okay.

MR. KOREN: Okay. And as far as OSHA, I met with OSHA - - yesterday, and we agreed to do joint presentations and share compliance assistance to make sure that the small businesses are able to get the Wage and Hour information. We have a lot of it to provide - - .

The only problem when you call Wage and Hourly - - phone number because we don't take - - we're not looking to investigate callers, we're looking to - - . The only time we request specific information is if you have a complaint, and usually the employers don't complain about themselves.

[Laughter]

MR. OWENS: Especially this gentleman over here, right?

[Laughter]

MR. STEVENS: My name is Don Stevens, and I'm representing the St. Louis District Office, which--for the United States Equal Employment Opportunity Commission. St. Louis District Office covers Missouri, a little bit of Illinois, Kansas, Nebraska, and Oklahoma. I'm the director of the Oklahoma area office, and I was asked to come to this meeting.

The EEOC enforces federal anti-discrimination employment law. Basically it's Title 7, the Americans with Disabilities Act, - - . It deals with eight things, it's racial - - sex, national origin, age if you're 40 or older, disability, and protection from retaliation. So we accept claims of employment discrimination from employees, and often we're not necessarily seen as good news when we come to businesses.

On the other hand, the Commission, I believe, serves an important role as Congress has set us up to try to resolve matters before it ends up in federal court. You know, most people can just bring a lawsuit against anybody under any circumstance that they want to. That's not true in all of the federal employment laws that we enforce, so the Commission feels like through its process, we get a lot of things resolved before it actually gets into federal court.

But again, I'll stay around to answer any questions that you all might have. Our main outreach to the business community are technical assistance programs that we hold annually. There's going to be one in Oklahoma in June. I believe there's also one that's going to be in St. Louis. I don't believe Kansas is holding one this year. But you can get all the information about those technical assistance programs at www.eeoc.gov.

Thank you.

MR. OWENS: Yes, sir. Yes, ma'am, SBDC.

MS. STEVENS: Very briefly, we're not directly involved in regulation with the Kansas - - , so I'll keep this short. We do provide free consultation services and₃₂affordable training to small

businesses. We meet with - - one-on-one, help them from a level of a dream and idea for a business to become connected with some of the folks around the table with OSHA and IRS and Department of Labor so that they start their businesses with that solid foundation.

We work with established businesses when they're in trouble sometimes to connect them. Marian has been very helpful with some of our clients. She's with IRS. They have little - - . So we help with all aspects of the three M's--marketing, management, money--trying to get people connected with agencies and help them for their business. And we're - - .

MR. OWENS: And a great resource. SBDC is tremendous, and our agency's committed to sustaining the strengthening the Small Business Development Center. So thank you for everything you do to talk about the three M's, which that's the first time I heard that, the three M's. But at SBA our focus is to start growing and finding success for small business, and SBDC is a critical resource partner. So thank you for being here.

Yes, sir.

MR. HIRST: I'm Ross Hirst. I'm the Senior - - liaison for the state of Kansas.

MR. OWENS: For the state of Kansas?

MR. HIRST: For the state of Kansas, which brings me - - .

MR. OWENS: For the IRS?

MR. HIRST: For IRS.

MR. OWENS: I just wanted to clarify.

MR. HIRST: And I think most of you--and Marian Adams over here is with the IRS also. I'll let her present her function - - .

But most of you know what IRS does, so I don't think I need to explain that. Most of us have a pretty good grip on that. But most people are not aware that the stakeholder liaison even exists, and our function is somewhat unique. We have existed for just a few years. I think we're about five years old within the agency. We focus on engagement of payroll and practitioner community stakeholder organizations. We're essentially a communications function.

Part of the communications function of IRS communications liaison - - and we communicate with practitioner organizations and stakeholder organizations, such as small business organizations and those types of groups to communicate the policies, practices, and procedures that help facilitate compliance with federal - - .

And as you can imagine, right now we're very involved in communicating information about the rebate program that's just been

enacted, and we're involved in - - .

Also as part of our function we are involved in the disaster assistance program. I am the disaster assistance coordinator for the state of Kansas and back up a couple of other states who, right now we're watching very closely the state of Missouri and what's taking place over there.

MR. OWENS: Thank you. Thank you for being here. The Taxpayer Advocate and Stakeholder Liaison are tremendous resources for small businesses, and certainly I urge you to connect with these offices within IRS. And I defer to the Taxpayer Advocate's Office now to make some comments, but I do want to thank Anita Olsen, who is the National Taxpayer Advocate, a tremendous colleague.

And I will say small businesses, 60 percent of issues that are referred to the Taxpayer Advocate ultimately can be resolved with a favorable outcome for small businesses. And the Taxpayer Advocate's Office is independent. So when you contact that office, you're seeking much of what we do, but seeking that assistance.

I will defer to you, - - . Thank you.

MS. ADAMS: I'm Marian Adams, and I'm the local Taxpayer Advocate for IRS. I'm located here in Wichita. And the role of the Taxpayer Advocate office is to help taxpayers to resolve problems that they have not been able to get resolved in the normal channels. So we help both individual taxpayers and business owners with whatever kind of issues they may encounter with IRS; whether that be an exam, collection, a refund issue.

Of course this time of year we get mostly involved with individuals who need their refunds and they need them now. After filing season we have a lot more issues regarding collection and exam cases that come into our office.

When a case comes into us, I have a case advocate that's assigned to work with that taxpayer individually to the end of the resolution of their problem. Now, we can't always give them exactly what they want, but we do our best to try to help them to resolve their problem as much as possible.

We work very closely with congressional offices also, so when you have those taxpayers who come to you and say, "I'm going to write my congressman," it's going to end up in our office, because we often respond to those inquiries for those congressional office as well.

And as was mentioned, our National Taxpayer Advocate, Anita Olsen, is a very huge advocate for taxpayers. And she's on the Hill testifying before Congress many times each year in regard to hardships that are being created by tax laws, again for both individuals and the small business owners. So it is a very, very important program, and we

do a lot to help individuals and taxpayers when they encounter problems with the IRS.

MR. OWENS: Thank you.

Yes, sir. Yes, ma'am.

MS. RING: Hello. My name is Sandy Ring, and I'm with South Central Kansas Economic Development District, also known as SCKEDD. We've been trying to figure out a different name, but that's still it.

[Laughter]

The entity of our office has been established by Small Business Administration. We are a certified development company, which we provide services to small businesses to fill in the gap of financing needs. We do not - - we work very closely with various agencies around the table here - - Small Business Development Center and getting them into a position where they can either, one, get traditional bank financing, but then the bank might have a need or a shortfall.

We provide - - Small Business Administration 504 program, 7(a) programs - - little bit, but guarantee programs, as well as we have internal loan programs that were designated by EDA, USDA, and FDA. We work very closely with these entities. A lot of times they're just right at the verge of getting a loan, straddling the teeter-totter of getting their next step, whether it be expansion - - we are not usually a bail-out entity by any means. There is some misconception to that.

We work with them very closely to make sure that there is something there that - - help them. We take a look at their financials, we do not prepare them by any means, but we can give them our opinions, our directions - - .

We have one of the largest CBCs in the state of Kansas - - the economy with the direction - - and the need for financing. We do have funds available at this time. That's not always the case. We do have funds available - - .

MR. OWENS: Great resource. Thank you. Thanks for being here.

FEMALE VOICE: - -

MALE VOICE: Nothing really to add to Sandy. I really take care of our internal funding programs, our large ones participating in the SBA micro loan program that's usually for loans 35,000 and below. It usually starts about 15 and go up to our limit. I also package the - - guarantee loans for various lenders throughout our 14 counties we take care of. And take care of the final - - primary commercial lenders larger loans - - .

MR. OWENS: Thank you.

FEMALE VOICE: May I interject one thing. - - and primarily right now we've been working with businesses - - .

MALE VOICE: - - .

MR. OWENS: Right. Economic Development Administration, yeah, and the role you play working with SBA is important in today's economy. We know that it's fundamentally strong, but we also know as you look at credit issues or concerns for access to capital, SBA today as banks have to evaluate their--for the terms of their credit and what the thresholds will be for the access to credit for small businesses, SBA's guarantee and the work that you do is important. So we value that. Thank you.

Yes, ma'am.

FEMALE VOICE: I wasn't really prepared to say anything, I was here to listen. But we work with all the federal agencies, that's our job here in the State offices. We do have individual cases, we also have businesses who come to our offices for assistance. And certainly Mary--big advocate of Mary, because she has helped us on many individual IRS cases.

Any case--you were saying the in-house office did not get back with him. I don't know what the length of time is. We try to get back with the person within 30 days, so they should go back to the office. We sometimes go to the Washington offices. We usually try to get answers on a local or a state level before we have to go to the national--to the Washington office.

MR. OWENS: Thank you, thank you.

FEMALE VOICE: And we appreciate every office, every federal agency that has congressional liaisons that we work with.

MR. OWENS: Thank you. And we work closely with congressional offices with constituent relations. There may be a small business case that - - responded to an agency, feel free to also contact our office, and we will give them, I guess, from the congressional side, as well as inside the government to work on behalf of small businesses.

We enjoy that work. We're accountable. We report to you, so thank you.

We know this good man. We're going to ask you some more about that testimony.

[Laughter]

Back here, yes, ma'am.

FEMALE VOICE: - -

MR. OWENS: With Congressman Tiahrt?

FEMALE VOICE: Yes.

MR. OWENS: That's great. You know Matt - - ?

FEMALE VOICE: Yes.

MR. OWENS: He's a good man, good candidate. I worked with him years ago - - Industries, I believe. But anyway, I know he used to work with your gentleman. Thank you for being here.

Is that it? - -

Thank you. Mr. Chairman, thank you. Thank you all for being here.

[END OF AUDIO]